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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 CHARLES TRAYZON GILBERT,	)	CASE NO. ED CV 13-1883 GHK (RZ)
	)	
12 Petitioner,	)	
	)	ORDER SUMMARILY DISMISSING
13 vs.	)	SUCCESSIVE HABEAS PETITION
	)	
14 C. GIBSON, Warden,	)	
	)	
15 Respondent.	)	
_____	)	

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17 Charles Trayzon Gilbert presents a successive habeas petition that lacks the  
18 required Court of Appeals authorization for such a petition. The Court will dismiss the  
19 petition and the action summarily for lack of jurisdiction to entertain it.

20 Rule 4 of the Rules Governing Section 2254 Cases in the United States  
21 District Courts provides that “[i]f it plainly appears from the face of the petition and any  
22 exhibits annexed to it that the petitioner is not entitled to relief in the district court, the  
23 judge shall make an order for its summary dismissal and cause the petitioner to be  
24 notified.”

25 Section 2244 of Title 28, part of the Antiterrorism and Effective Death Penalty  
26 Act, requires that the district court dismiss most successive habeas corpus petitions:  
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1 (b)(1) A claim presented in a second or successive habeas corpus  
 2 application under section 2254 that was presented in a prior application shall  
 3 be dismissed.

4 (2) A claim presented in a second or successive habeas corpus  
 5 application under section 2254 that was not presented in a prior application  
 6 shall be dismissed unless –

7 (A) the applicant shows that the claim relies on a new rule  
 8 of constitutional law, made retroactive to cases on collateral  
 9 review by the Supreme Court, that was previously unavailable;  
 10 or

11 (B) (i) the factual predicate for the claim could not have  
 12 been discovered previously through the exercise of due  
 13 diligence; and

14 (ii) the facts underlying the claim, if proven and viewed  
 15 in light of the evidence as a whole, would be sufficient to  
 16 establish by clear and convincing evidence that, but for  
 17 constitutional error, no reasonable factfinder would have found  
 18 the applicant guilty of the underlying offense.

19 (3)(A) Before a second or successive application permitted by this  
 20 section is filed in the district court, the applicant shall move in the appropriate  
 21 court of appeals for an order authorizing the district court to consider the  
 22 application.

23 . . .

24 In *Felker v. Turpin*, 518 U.S. 651, 656-57, 116 S. Ct. 2333, 135 L. Ed. 2d 827  
 25 (1996), the Supreme Court noted that this statute transferred the screening function for  
 26 successive petitions from the district court to the court of appeals. This provision has been  
 27 held to be jurisdictional. That is, the district court cannot entertain a successive petition  
 28 without prior approval from the Court of Appeals. *Cooper v. Calderon*, 274 F.3d 1270,

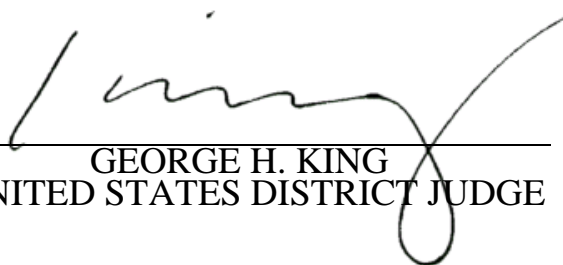
1 1274 (9th Cir. 2001). The district court therefore either must dismiss a successive petition  
2 for lack of jurisdiction, or it may transfer the action, in the interest of justice, to the court  
3 where the action properly could have been brought. 28 U.S.C. § 1631; *Pratt v. United*  
4 *States*, 129 F.3d 54, 57 (1st Cir. 1997).

5 Petitioner attacks his 1998 convictions of numerous serious crimes, including  
6 attempted murder. He previously challenged that conviction on habeas in this Court,  
7 however, and the Court denied relief on the merits and dismissed that action with prejudice.  
8 See docket in *Gilbert v. CDC*, No. ED CV 01-0439 GHK (RZ) (Judgment filed January  
9 31, 2001).

10 Petitioner's current petition does not enjoy the required Ninth Circuit  
11 authorization for successive petitions. No factors appear which make it preferable to  
12 transfer this case to the Court of Appeals, rather than dismissing it.

13 Accordingly, IT IS ORDERED that the Petition is dismissed.

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15 DATED: 11/13/13

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19 GEORGE H. KING  
20 UNITED STATES DISTRICT JUDGE  
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